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2004 SEP 22 A 10:19

September 20, 2004

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Joseph M. Hegedus, Esq.
Ohio Patrolmen's Benevolent Assoc
555 Metro Place North, Ste. 100
Dublin, OH
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Re: SERB Case No. 04-MED-05-0620
Ohio Patrolmen's Benevolent Association
-and-
Sandusky County Sheriff

Dear Don and Joe:

My fact-finding report and recommendations are enclosed. The invoice will follow within a week or so.

Sincerely,



Donald R. Burkholder, Ph.D.

313-993-1089

cc: SERB

STATE EMPLOYMENT RELATIONS BOARD

STATE EMPLOYMENT
RELATIONS BOARD
2004 SEP 22 A 10 20

IN RE:

SERB CASE NO: 04-MED-05-0620

SANDUSKY COUNTY SHERIFF (PARAMEDICS)
Employer

-and-

OHIO PATROLMEN'S BENEVOLENT ASSOCIATION
Employee Organization

FACT-FINDER
DONALD R. BURKHOLDER

FACT FINDER'S REPORT AND RECOMMENDATION

APPEARANCES:

FOR THE EMPLOYEE ORGANIZATION:

Joseph M. Hegedus, Esq., Advocate
Ohio Patrolmen's Benefit Association

FOR THE EMPLOYER:

Donald J. Binkley, Advocate
Clemans, Nelson & Associates, Inc.

STATE EMPLOYMENT RELATIONS BOARD [SERB]-(Ohio)

SCOPE OF DUTIES OF THE FACT-FINDING PANEL in accord with
Section 4117 of the Administrative Code

- A. The fact-finding panel shall attempt to mediate the disputes of the parties prior to conducting a fact-finding hearing.
- B. When mediation efforts do not resolve all issues at impasse, the fact-finding panel shall hold an evidential hearing except that the parties may stipulate facts and waive a hearing. For purposes of hearing, the fact-finding panel shall have the power to regulate the time, place, course, and conduct of the hearing, administer oaths and affirmations, examine witnesses and documents, take testimony and receive evidence, and request the Board to issue subpoenas to compel attendance of witnesses and the production of books, papers, and records relating to any matter before the fact-finding panel. The fact-finding panel may not choose a hearing location at a cost to the parties unless the parties fail to agree to an alternate cost-free location. Fact-finding hearings are to be held in private.
- C. The fact-finding panel, in making findings of fact, shall take into consideration all reliable information relevant to the issues before the fact-finding panel.
- D. The fact-finding panel, in making recommendations, shall take into consideration the following:
 - (1) Past collectively bargained agreements, if any, between the parties.
 - (2) Comparison of unresolved issues relative to the employees in the bargaining unit with the issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved.
 - (3) The interest and welfare of the public, and the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;
 - (4) The lawful authority of the public employer;
 - (5) Any stipulations of the parties; and,
 - (6) Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

Executive Summary of Fact Finder Recommendation

Issue 1

Art.1, Sick Leave
Employer Language

Issue 2

Art. 30, Group Insurance.
Employer Language

Issue 3

Art. 31, Uniforms, Continuing Education
Employer Language.

Issue 4.

Article 34, Wages
Three-and-one-half (3 1/2%) for each year of the Agreement

Issue 5

Article 37, Miscellaneous
Employer Language

Introduction

The parties to the proceeding are the Sandusky County Sheriff's Emergency Medical Services (a public employer) and the Ohio Patrolmen's Benefit Association (an employee organization). The bargaining unit consists of approximately 21 members in the classification of paramedic. Professional, confidential, and management level employees, supervisors, including Sheriff, Captain, Assistant Administrator, and all other employees are excluded. The Ohio Patrolmen's Benefit Association was certified as the collective bargaining representative for this unit on April 30, 1992.

The Office of Sheriff is the chief law enforcement officer for Sandusky County; enforces traffic laws; investigates crimes; delivers subpoenas; and administers the County jail. The Sheriff serves as appointing authority for Sandusky County Emergency Medical Services (EMS) in accord with O.R.C. 307.5. The role of the paramedic is to provide emergency medical assistance and advanced life support in conjunction with an medical doctor; communicate with patients, families, and other emergency personnel to conduct rescue operations.

The parties met for collective bargaining on June 16 and July 9, 2004, and for a mediation session with FMCS mediator M. Terpinski on July 26, 2004. The unresolved issues include the following:

1. Article 20, Sick Leave
2. Article 30, Group Insurance
3. Article 31, Uniforms, Continuing Education
4. Article 34, Wages
5. Article 37, Miscellaneous

Appointment and Related Matters

The Fact-Finder was notified by a Notice of Selection by the parties to SERB, dated July 6, 2004; the SERB letter of appointment was dated July 8, 2004. The parties were asked in the Fact-Finder's confirmation letter dated July 12, 2004 to provide position statements, preparatory

material including a copy of the present agreement, information on the composition and history of the bargaining unit, a list of matters in dispute, and a list of negotiating sessions which have taken place. The parties provided this information in timely fashion

Hearing

The parties mailed a Notice of Extension of Fact-Finding to SERB on July 23, 2004. A Fact-Finding Hearing was conducted on Wednesday, August 18, 2004 at the Sandusky County Sheriff's office in Fremont. Mediation was offered at the outset of the session; it was decided to proceed without mediation initially, but that mediation could take place at any time during the hearing if it seemed appropriate. The five issues were discussed in a wide-ranging dialogue over the course of approximately four-and-one-half hours, during which the advocates and witnesses presented testimony and briefs and exhibits were provided, discussed, and admitted into evidence. Substantial information on the issues was provided, along with helpful explanations when the Fact Finder sought clarification. The advocates and the parties were courteous and professional, characteristics greatly appreciated by the Fact-Finder.

Fact-Finding Report Due Date

The parties agreed that the Fact-Finder Report would be both faxed and mailed in the overnight mail (U. S. Postal Service Express Mail) on or by Monday, September 20, 2004.

Format

1. Issues will dealt with in sequence, by Article, as listed above.
2. A section labeled Current Contract will briefly discuss the present language of the article/section to be dealt with.
3. The text of the current language will be apparent in that it will not be underlined. Union- Requested language will be identified in a section labeled as such, with language the Union wants to *drop* identified with boldface type, enclosed in boldface parentheses, i.e., [] and a single

underline, and language the Union wants to *add* identified with boldface and double underline.

4. The same system noted immediately above will be used for Employer - Requested language.

5. Where a party requests no change, such a request will be clearly noted. with the existing language not repeated.

6. A section labeled Discussion and Analysis is provides the Fact-Finder's rationale in brief. This section is not present where the parties agreed on the disputed language at the Hearing.

7. A section labeled Recommended Language will indicate the Fact-Finder's decision.

1. Article 20, Sick Leave

Section 20.1 Crediting Sick Leave.

Current Contract

Sick leave shall be earned by full-time bargaining unit members at the rate of .081 hours for each regular, non-overtime hour of service with the Department. Sick leave will not be earned while an employee is on unpaid leave of absence. Employees shall be permitted to accumulate sick leave credit in an unlimited amount.

Union - Requested Language

No change.

Employer-Requested Language

No change.

Section 20.2, Charging of Sick Leave

Current Contract

Sick leave shall be charged in minimum units of one-half 1/2 hour. An employee shall be charged for sick leave only for days and hours for which they would otherwise have been scheduled to work. Sick leave payment shall not exceed the normal scheduled work day or pay period earning.

Employer - Requested Language

x x x pay period earning. Use of sick leave on more than three (3) separate occasions in a calendar year of one (1) or two (2) or three (3) day absences without a statement from a licensed physician shall result in the first day of the fourth (4th) absence and the first day of any subsequent absence being unpaid. Sick leave use qualifying as Family Medical Leave (Article 23), Injury Leave (Article 27), and sick leave used due to the death of a member of the employee's immediate family (Article 20, Section 20.3) shall be excluded from this provision.

Union-Requested Language

x x x to work. Sick leave payment shall include payment for all scheduled overtime that the employee was entitled to on the day[s] that the employee is on approved sick leave. Thus, the employee shall be paid the same amount for any approved sick leave time that the employee would have been paid if the employee actually worked.

Discussion and Analysis

Sick leave is obviously a major issue for both parties. The Union asserts that although absences have been labeled excessive and unnecessary, 1) all absences have been approved, 2) there has been no discipline imposed, 3) the Employer's appearing to blame station closure

on sick leave abuse is without merit. The paramedics schedule of 24 hours on, then 18 off, leads to a 48 hour work week in one week, 72 hours the second week, or 120 hours in a two-week period.

The Union's request is that when an employee uses sick leave, whether it be for illness or injury, illness or injury in the immediate family, pregnancy or death in the immediate family, the employee shall receive overtime payment if the sick leave occurs on a day or days that are one of the 832 hours of "built in" overtime. The Employer notes that sick leave is now generally used by employees on their short [two (2) day week, and the result has been a serious staffing problem.

The Employer asserts that the present situation is to a significant degree based on an agreement in 1994, initiated by the Union, to go from an FLSA 207 (k) work period of 14 days, 106 hours for overtime to seven (7) days, 40 hours, an agreement reached under threat of a lawsuit by the OPBA, and including back pay to all paramedics for the previous two years in an amount exceeding one-half million dollars. When that agreement was made, it resulted in 832 hours of an employee's regularly scheduled 2912 hours per year being paid at time and one-half. It was agreed at that time that only actual hours worked and hours of vacation leave would be used in the computation. All other hours for which the employee is compensated but does not work were not be included in determining eligibility for overtime, and sick leave was not included. This version of the history and development of the relationship between the parties regarding overtime was not contradicted, and must be given significant weight.

Recommended Language:

Considering the history and development of the overtime issue, the problems for the Employer of adequate staffing, and the cost of overtime, the Employer language is recommended.

2. Article 30, Group Insurance

Current Contract:

Section 30.2. Upon the effective date of this Agreement, the Employer agrees to contribute an amount of money equal to eighty-seven percent

87%) of the cost of the health insurance plan that is provided to other county employees, toward the purchase of employee health insurance. The employee, through payroll deduction, shall contribute the remaining thirteen percent (13%) of the total cost.

Union-Requested Language

No change.

Employer-Requested Language

Upon the effective date of this Agreement, the Employer agrees to contribute an amount of money equal to [eighty seven percent (87%) of the cost of the health insurance plan that is provided to other county employees, toward the purchase of employee health insurance. The employee, through payroll deduction, shall contribute the remaining thirteen (13%) of the total cost.] that provided to other County employees, toward the purchase of employee health insurance through the plan that is provided to other county employees. The employee, through payroll deduction, shall contribute the remaining premium cost. If during the duration of this Agreement, the Board of Commissioners voluntarily agree to a premium cost structure with another department that is more beneficial to those employees that what is being afforded to OPBA bargaining unit employees, the Employer agrees to extend the same premium cost structure to OPBA bargaining unit employees.

Discussion and Analysis:

The SERB 2003 Report on the Cost of Health Insurance in Ohio's Public Sector, in the 50,000 to 100,000 population category for counties, shows monthly cost of \$48.91 for single coverage and \$121.44 for family, i.e., at times 12, \$587 for an individual, or \$1,457 for a family. Sandusky County employees currently pay, on a biweekly basis, \$21.75 for individual coverage, and \$53.23 for family coverage. Multiplied by 26 pay periods, the result is \$565.50 for single or \$1,384 for family coverage on an annual

basis. Thus the norm for health premiums for Sandusky County employees is significantly below the statewide average for similar counties. In and of itself, this factor does not justify the increased burden the Employer seeks to place on bargaining unit members. At the same time, the rapidly increasing cost of health care nationally has led to a trend whereby employees have a more significant stake in the use of health care and therefore in ultimately bringing its costs under control. Of more immediate concern is the relationship of health premiums to other costs to the employer and rewards for the employees.

Recommended Language:

The Employer's language is recommended.

3 Article 31, Uniforms/Continuing Education

Current Contract:

Section 31.1 The Employer will determine the proper uniform to be worn by bargaining unit employees and employees shall be required to be in proper uniform upon reporting for duty. Employees will be authorized up to four hundred dollars (\$400.00) per calendar year for the purchase of uniforms required by the Employer. Quantities will be specified by the Employer. There will be no carry-over of the annual uniform authorization. The Employer will provide a list of uniform items and authorized suppliers. The Employees on their own time, will purchase necessary items and will be reimbursed in a reasonable amount of time after submitting a receipt showing the articles purchased and the date of purchase.

Section 31.2 The Sheriff shall continue his policy in regard to continuing education (C/E). Any change in such policy shall not be for discriminatory, arbitrary or capricious reasons. The Employer shall give bargaining unit employees time off from work with pay to attend ACLS, CPR, BTLs or PHTLS as well as other work related training sessions mandated by the Employer or the Employer's medical director. Such time shall include any FLSA allowable travel time needed. The Employer will not pay for attendance or travel time for state required certification courses necessary to maintain the paramedic license.

Union Requested Language:

Section 31.1 The Employer will determine the proper uniform to be worn by bargaining unit employees and employees shall be required to be in proper uniform upon reporting for duty. Employees will be authorized up to four hundred dollars (\$400.00) per calendar year for the purchase of uniforms required by the Employer. Said payment will be paid in a separate check in January for each year of the Agreement. [Quantities will be specified by the Employer. There will be no carry-over of the annual uniform authorization. The Employer will provide a list of uniform items and authorized suppliers. The Employees on their own time, will purchase necessary items and will be reimbursed in a reasonable amount of time after submitting a receipt showing the articles purchased and the date of purchase.]

Section 31.2 The Sheriff shall continue his policy in regard to continuing education (C/E). Any change in such policy shall not be for discriminatory, arbitrary or capricious reasons. The Employer shall give bargaining unit employees time off from work with pay to attend ACLS, CPR, BTLs or PHTLS as well as other work related training sessions mandated by the Employer or the Employer's medical director. Such time shall include any FLSA allowable travel time needed. The Employer will also [not] pay for continuing education classes [attendance or travel time] required for state required certification courses necessary to maintain the paramedic license. (80 hours)

Employer Requested Language:

No change, or language which provides that the Employer supply at no cost to the employee all uniforms required by the Employer in quantities specified by the Employer. Uniform order dates would be in February and August of each year.

Discussion and Analysis:

The employees' request more freedom to purchase the uniforms and/or accessories they believe they need. The Employer is concerned about controlling the way its employees look in public. There appears to be no pressing need to change a system which appears to be working, a system the Employer admits is not perfect. It is preferable from the Employees' standpoint to the previous system whereby the Employer supplies "...at no cost to the employee all uniforms required by the Employer in quantities specified by the Employer," with uniform order dates of February and August each year.

Recommended Language:

Employer Position.

4. Article 34. Wages

The Union seeks five (5) per cent for each year of the Agreement. The Employer position is a one (1) percent pay raise effective the pay period that includes January 1, 2005, and no general increase for 2006 and 2007. The positions of both parties are extreme.

The Employer notes that the future of the Sandusky County EMS is uncertain, i.e., 1] a committee is considering a recommendation for a dedicated millage, 2] the Commissioners are not willing to continue to fund EMS out of the already stressed general fund, 3] the County is not mandated by the State to fund EMS; 4] the EMS appropriation for 2004 is \$1,328,361, which represents about nine percent (9%) of the County budget. and 5) "Article 4 of the current agreement makes it a management right to determine the overall budget and the uses thereof."

The fact of the matter is that Sandusky County has an established, professional, and reputable EMS unit. Whether it should exist or continue to exist is not of any substantive concern here; that is a matter for the people of Sandusky County to decide through the appropriate mechanisms, whether it is action by the legislative body, a vote on a dedicated millage, or some combination thereof.

Whatever the extent of weight given the comparables presented, the unit can not be characterized as high-paid. Even considering all of the tenuous circumstances the Employer asserts surrounds the Sandusky County General Fund budget, the fact is that the County had an Unreserved Fund Balance of approximately twenty (20) percent. The amount of \$2,825,696 "Unreserved-Undesignated " is indicated on page 6 of the "Combined Balance Sheet, All Fund Types, Account Groups and Discretely Presented Component Units, December 31, 2002" of the Ohio Auditor's Financial Condition Sandusky County, Single Audit. Dividing the Unreserved-Undesignated figure of \$2.8M indicated above by the \$14,651,496 shown as Excess of revenues over (under) expenses on page 10 of the audit, "Combined Statement of Revenues, Expenditures and Changes in Fund Balances, Budget and Actual (Non-GAAP Budgetary Basis), All Governmental Fund Types, for the Year Ended December 31, 2002," results in a figure of approximately 19.3%.

Employer testimony indicated that negative changes during the period from the end of the audit, at the end of calendar 2002, could be harmful to the county, and the Fact-Finder recognizes this is a realistic possibility. Nevertheless, potential dire developments and the perceived threat to management rights, its budgetary/financial decisions in particular, do not outweigh the fact that the testimony and exhibits presented, particularly the audit, make it abundantly clear that the County is in a strong position. The norm for an unreserved general fund is five (5) to ten (10) percent, with numerous qualifiers and allowances for circumstances specific to the governmental entity at hand, as set forth in Ian J. Allan, "Unreserved Fund Balance and Local Governmental Finance", The Government Finance Officers Association Research Bulletin, September 1990, and generally substantiated by other public finance authorities.

The county board of commissioners granted an increase of three (3) percent or \$.40 per hour, whichever is greater, to general fund departments and departments under the commissioners authority effective the first full payroll for 2004. Increases of three percent plus are the norm generally.

Discussion and Analysis:

Considering the Employer's financial health, understanding that the unit generates income, taking these recommendations as a totality, recognizing that the rate of increase in group insurance costs should taper off, taking special note that every one (1) percent increase costs the Employer \$7,689.20, and taking into account the comparables offered, the recommendation is a three-and-one-half percent (3 1/2%) increase for each year of the Agreement.

Recommended Language:

Three-and-one-half per cent (3 1/2%) for each year of the Agreement.

Article 37. Miscellaneous

Current Language

Section 37.1 When an employee who is a volunteer firefighter or volunteer provider of emergency medical services is late to work or absent from work because of an emergency to which the employee was dispatched as a volunteer, the employee is expected to notify the Employer at least one hour prior to the start of his regularly scheduled shift that he will be late or absent from work. Such late or absent employees will also be required to provide the Employer with a statement from the Chief of the volunteer fire department or director of the medical services organization, stating that the employee responded to an emergency and the time of that response. Each such employee under this section shall recognize that their primary responsibility is to the Employer and any such time lost from assigned duties will be kept to the absolute necessary minimum for such volunteer services. The employee may use accrued vacation leave for this purpose.

Union Requested Language

Section 37.2 [new] The Employer agrees that all four Life Squads will be in service and staffed with 21 Paramedics/3 Captains at all times except in cases of mechanical failure or bona fide

emergency. The minimum staffing of the four squads will not, by itself, result in an alteration in the manner of granting paid leaves as is the current practice.

Section 37.3 [new] In the interest of maintaining staffing for four (4) Life Squads, the bargaining unit would be open to the use of contingency paramedics to fill open shifts in the following circumstances: When there is already one bargaining unit employee in non-scheduled overtime status or all bargaining unit employees have turned down overtime requests for the shift. Vacation shall not be denied to any bargaining unit employee as long as his or her shift can be filled by one non-scheduled overtime shift and/or contingency paramedics. The County will maintain 24 full-time paramedics of which 21 paramedics will be non-management paramedics.

Employer Requested Language

No change.

Recommended Language

Employer Position

Discussion and Analysis:

The Employer objected to this Union proposal on the grounds that it 1) infringes seriously on management rights, and 2) it is a non-mandatory or permissive subject of bargaining. The point is well-taken. The Union noted at the hearing and on September 14th, in response to a communication to the parties from the Fact-Finder, that the Employer never raised an objection to negotiating concerning Article 37. Sections 37.2 and 37.3, until the date of the Fact-Finding. The objections of the parties are noted and credited as to their veracity. However, of more significance here is the overall health and survival of the unit in the long term.

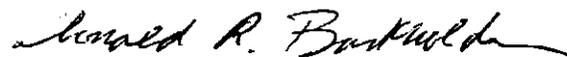
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Summary: All relevant information was taken into consideration, including the lawful authority of the public employer, past collectively bargained agreements, and the comparables offered, with special emphasis on the “interest and welfare of the public and the ability of the public employer to finance and administer the issues proposed. “... Other factors...which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment” were also given special emphasis.

As noted above, the people of Sandusky County through their legislative body have a decision to make regarding the future of the County EMS unit. Despite the Employer’s expressed concern about the future of this unit, it is the present we must deal with here. The County may very well opt to discontinue the unit; it has every right to do so. Nevertheless, the Employees must live in the present. They deserve equitable treatment and recognition, materially and otherwise, for providing quality emergency medical services. The recommendations herein would provide that recognition to the extent that it is feasible given the overall circumstances, especially the anticipated political decision concerning the unit’s future. It is also noteworthy that the Employer obtains increased control due to the elimination of “built-in overtime” and therefore, should experience reduced costs in that area, along with the opportunity to gain further reductions through reductions, or at least a slowing of the rate of increase in insurance premiums, through standardization of group health insurance for county employees.

The professionalism and generally positive attitudes exhibited by the parties is recognized and appreciated.

Respectfully submitted,



Donald R. Burkholder, Ph.D.